

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

OPINION ON REQUESTS FOR INTERVENOR COMPENSATION

This decision covers contributions to three separate decisions in the Commission's Procurement Rulemaking (R.) 01-10-024. This decision awards \$178,410.72 to The Utility Reform Network (TURN) for its contribution to Decision (D.) 02-08-071, D.02-10-062 and the Procurement Review Group process, \$13,915.00 to Consumers Union (CU), for its contributions to D.02-08-071, D.02-10-062, and the Procurement Review Group process, and \$ 2,271.43 to Aglet Consumer Alliance (Aglet) for its contribution to D.02-12-069. The request for compensation filed by Union of Concerned Scientists will be handled in a separate decision.

1. Background

On October 25, 2001, we opened R.01-10-024 to establish ratemaking mechanisms to permit California's largest utilities¹ (Utilities) to resume procurement of energy. Beginning in early 2001, and continuing through 2002,

¹ The respondent utilities included Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E).

the Utilities did not purchase power for their customers' net short needs. By "net short," we refer to the difference between customer loads and the power already under contract to the Utilities or generation from a Utility-owned asset.

The Legislature enacted Assembly Bill (AB) X1-1 on January 31, 2001, authorizing the California Department of Water Resources (DWR) to make electricity purchases for the purpose of selling electricity to Utility retail customers. At that time, the Utilities were not financially able to meet their net short needs.

Under the law, DWR's authority to contract for such purchases expired on January 1, 2003. The ratemaking mechanisms and procedures that would enable the Utilities to resume the responsibility of procuring power for their customers were to be developed in this proceeding. Specifically, in a scoping memo issued April 2, 2002, the Commission identified four basic objectives of this rulemaking:

- Improve the ability of the Utilities to meet their obligations to serve their customers' electric loads;
- Enhance the Utilities financial stability and creditworthiness;
- Diminish the need for after-the-fact reviews of the reasonableness of Utility procurements; and
- Ensure that the Utilities can recover their procurement costs in a timely fashion.

The Commission has issued several different decisions in this ongoing rulemaking. While the primary focus of the rulemaking continues to be the establishment of a regulatory framework for longer-term procurement, the Commission determined that certain other issues required resolution in advance of the decision on long-term procurement.

First, in August 2002, the Commission issued D.02-08-071, which granted, in part, a May 6, 2002 motion filed by Southern California Edison (SCE) requesting authority to enter into procurement contracts for a portion of its residual net short, using the credit of DWR, prior to January 1, 2003. D.02-08-071 allowed SCE, as well as Pacific Gas and Electric Company (PG&E) and San Diego Gas and Electric Company (SDG&E) to conduct interim procurement. D.02-08-071 also authorized the use of Procurement Review Groups (PRGs) and adopted an expedited procedural process to review and approval process these contracts. D.02-08-071 also addressed the procurement of renewables in the transition period by setting aside a portion of procurement to come from renewable resources.

In order for the Utilities to accurately determine their future resource needs, the Commission issued D.02-09-053, allocating certain long-term power purchase contracts entered into by the California Department of Water Resources (DWR) among the respondent utilities. D.02-09-053 outlined the reasonableness review requirements that would be applicable to utility administration of the DWR contracts and directed the parties to file proposed reasonableness standards for Commission consideration. Following review of those proposals, the Commission issued D.02-12-069, which adopted, among other things, reasonableness standards for utility administration of the DWR contracts.

D.02-10-062 addressed the regulatory framework for longer-term procurement by adopting the Utilities' procurement plans (filed on May 1, 2002), modified to reflect the changes ordered by D.02-09-053 and the transitional procurement authorized in D.02-08-071. Among other things, D.02-10-062 continued the use of the PRGs through 2003 and stated: "We make the finding here that participation in the procurement review process discussed above by

non-market participants who are eligible to request intervenor compensation should be fully compensated because their active participation makes a significant contribution to this proceeding.”² D.02-10-062 also directed the Utilities to file modified short-term procurement plans.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1803 provides for the award of fees to customers who make a substantial contribution and whose participation without compensation would impose a significant financial hardship. To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b).

Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the intervenor’s planned participation and an itemized estimate of the compensation the intervenor expects to request. The NOI may request a finding of eligibility based on a showing that the intervenor’s participation would pose a significant financial hardship. Alternatively, a showing of financial hardship may be included in the request for compensation. Pursuant to Section 1804 (b)(1), a finding of significant financial hardship in one Commission proceeding creates a rebuttable presumption of eligibility for compensation in other proceedings commencing within one year of the date of the finding.

² D.02-10-062, pp. 3-4.

To be eligible, an intervenor must establish that it is a “customer” as defined in § 1802(b), and that participation without an award of fees or costs would impose a significant financial hardship (§ 1803(b)).

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation and Showing of Significant Financial Hardship

For eligibility to seek compensation, an intervenor must show undue financial hardship and customer status. On February 5, 2002, Aglet filed a timely NOI including a demonstration that it met the definition of “customer,” the requirement of financial hardship and the other criteria for an award of intervenor compensation. TURN also filed a NOI on February 5, 2002. Consumers Union filed its NOI on April 9, 2002 with a request for permission to file its notice late due to the change in procedural schedule and broader scope provided by the Assigned Commissioner’s April 2, 2002, scoping memo. CU’s late filing was accepted by ALJ ruling dated May 28, 2002.

Aglet and TURN were found to be eligible for compensation by ALJ ruling dated May 28, 2002. CU was found to have met the eligibility requirements of Section 1804(a), but elected to provide a showing of significant financial hardship in its request for compensation, consistent with Section 1804 (a)(ii)(B).

With respect to a group or organization, Section 1802(g) defines “significant financial hardship” to mean that “... the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding.

CU is an independent, nonprofit testing and information organization serving only consumers. CU’s advocates testify before Federal and state legislative and regulatory bodies, petition government agencies, and file lawsuits on behalf of the consumer interest. According to information provided on its website, its income is derived solely from the sale of Consumer Reports and other services, and from noncommercial contributions, grants, and fees. CU states that it has about 400,000 individual residential members in California and

that the economic interests of the individual members, with annual electricity bills averaging less than \$1,000, are small in comparison to the costs of active participation in this proceeding. We conclude that the potential economic interest of CU members in this proceeding is insignificant compared to the costs of their participation. Accordingly, we find that CU has made a sufficient showing of significant financial hardship within the meaning of the statute.

4. Timeliness of Requests for Award of Compensation

D.02-08-071 was mailed to the parties on August 26, 2002, D.02-10-062 was mailed to the parties on October 25, 2002, and D.02-12-069 was mailed to the parties on December 19, 2002. TURN's, CU's and Aglet's compensation requests were timely filed on December 23, 2002, December 16, 2002 and February 16, 2003, respectively. There was no filed opposition to the requests.

5. Substantial Contribution to Resolution of Issues

An intervenor may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt an intervenor's position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected.

5.1 TURN

In summary, we find that TURN made a substantial contribution to D.02-08-071, D.02-10-062, and the PRG process. TURN's involvement in

R.01-10-024 was extensive and included providing comments, testimony from three witnesses, three briefs, and multiple sets of comments on two separate proposed decisions, protests to Advice Letter filings and comments on the Utilities' 2003 procurement plans. Although the Commission did not adopt all of TURN's recommendations in their entirety, D.02-08-071 and D.02-10-062 incorporated many of the positions taken by TURN, and both decisions repeatedly cite TURN's contributions.

TURN was instrumental in the development of the Joint Principles for Interim Procurement dated July 12, 2002 (the Joint Principles). The Joint Principles, which were negotiated and sponsored by TURN, along with SCE, PG&E and CU, proposed an informal review process that would allow member non-market participant parties to review and assess the details of the Utilities' overall procurement strategies and specific proposed procurement contracts prior to the Utilities submitting the filings to the Commission. This advance guidance was intended to reduce the need for Commission adoption of specific criteria for after-the-fact review of utility contracting decisions. The Joint Principles also recommended that the Commission adopt an expedited procedural process for review and approval of the Utilities' Advice Letter filings. D.02-08-071 found reasonable both the establishment of the PRGs and the proposed process for expedited review and approval.

TURN also provided a series of proposals regarding renewable procurement that were adopted in D.02-08-071, including the adoption of a 20% target of renewable resources for each utility with a minimum rate of increase equivalent to 1% per year, and a requirement that the Utilities conduct a separate competitive solicitation for renewable resources during the transition period. The Commission highlighted TURN's contributions to D.02-08-071 stating: "We

give particular weight to the testimony of ORA, CEC, Aglet, and TURN because they are parties with full access to the evidence and possess the technical expertise to understand and assess it.”³

In D.02-10-062, the Commission either adopted, or found merit, in the majority of TURN’s recommendations, including price benchmarking for both renewable and non-renewable contracts, the use of exchange agreements, the adoption of an affiliate transaction moratorium, ratemaking treatment, and the relationship between balancing accounts and retail rates. D.02-10-062 recognized deficiencies in the Utilities’ procurement plans identified by TURN and directed the Utilities to provide more information on the risk management strategies and product mixes that would be used to satisfy their residual net short requirements in 2003 and beyond. D.02-10-062 also reflects TURN’s request for clarification of the 5% spot market purchase limitation and removed any explicit limits on spot market reliance. D.02-10-062 devotes several pages to price benchmarking and finds that TURN witness Woychik “highlighted several important issues facing this Commission regarding how to reasonably measure fair prices.”⁴ The decision expresses support for modifying TURN’s proposal for creation of incentive and penalty structures and requests “further input from parties on the proper design of such an incentive mechanism...”⁵ The decision agreed with TURN by rejecting PG&E’s proposal to change retail rates on a monthly basis. The decision also found merit in TURN’s proposal for consolidated tracking of a

³ D.02-08-071, p. 11.

⁴ D.02-10-062, p. 39.

⁵ D.02-10-062, p. 41.

wide range of ownership and operating costs associated with Utility Retained Generation in order to provide comparisons between the costs of various resources.

TURN also contributed to the renewable resource policies adopted by D.02-10-062. Most importantly, TURN provided specific data for the establishment of renewable energy benchmarks that assisted the Commission in establishing and reaffirming the 5.37 cent/kwh transitional benchmark. TURN also urged the Commission to allow contracts with out-of-state resources to be eligible for Renewable Portfolio Standard (RPS), and although the Commission did not adopt TURN's position, it did order additional briefing on this point. D.02-10-062 also directed parties to provide extensive comments and briefing on many of the RPS implementation issues addressed in TURN's testimony and briefs.

Finally, D.02-10-062 found that the Commission should retain the PRGs for 2003 and that PRG participants should receive intervenor compensation for their efforts. TURN participated actively in the PRGs, protested several advice letter filings related to interim procurement contracts, and submitted comments on the Utilities' 2003 modified procurement plans. As stated above, in D.02-10-062, the Commission determined that participation in the PRGs constitutes a significant contribution to the proceeding. TURN claims that the Commission should conclude that TURN made a substantial contribution on every set of issues it addressed in this proceeding and that an award covering all of its fees and costs is consistent with the recognition in the intervenor compensation statute that full compensation may be warranted even where less than full success is achieved by the intervenor. We agree. TURN's participation in this proceeding was comprehensive and the Commission either adopted or

found some degree of merit in each of TURN's issues or recommendations. Therefore, there is no need to reduce TURN's award to reflect issues on which they did not prevail.

5.2 Consumers Union

In this proceeding, CU weighed in on three major policy issues addressed in D.02-08-071, the Commission decision authorizing interim short-term utility procurement and D.02-10-062, the decision authorizing the Utilities' procurement plans. CU presented its position through testimony, comments, briefs, the development of the Joint Principles and participation in the PRGs.

We find that CU made a substantial contribution in three areas. First, CU supported authorizing SCE, as well as PG&E and SDG&E, to enter into procurement contracts quickly in 2002 to promote reliability and minimize reliance on the spot market. In particular, CU focused on the issue of the appropriate limit that the Commission should set on quantities for interim procurement, arguing that low ratepayer risk tolerance implied that the limit should be the full amount of the low case estimate of residual net short needs. While the proposed decision included a lower limit than that recommended by CU, the alternate decision, which was approved by the Commission, adopted CU's recommended limit. CU asserts that its contribution to D.02-08-071 is also apparent in the deletion of the proposed decision's limit to one-year contracts, and the simplified and expedited contract review process. We agree.

Second, CU was also an advocate for and participant in the development of the Joint Principles that were adopted by the Commission as part of D.02-08-071. As part of the Joint Principles, CU advocated that the competitive wholesale market requires skilled and flexible utility procurement

and a cooperative and well informed regulatory review process. CU also participated in the PRG process.

Finally, CU contributed to D.02-10-062's adoption of a procurement framework that emphasizes process and behavioral regulation and structural separation over micromanagement. D.02-10-062 reflects a strong theme of CU's testimony in its citation of the need "to give the Utilities flexibility in transacting for energy to meet their obligation to serve their customers so that the Utilities can take advantage of market opportunities that result in low and stable prices." Other portions of D.02-10-062 also reflect CU's positions and recommendations including requiring utility planning for long-term infrastructure needs, requiring that demand-side resources be included in the procurement plans, and responsibility for reserves of 15%. CU made a substantial contribution to D.02-08-071, D.02-10-062 and the PRG process.

5.3 Aglet

Aglet requests compensation for its substantial contribution to D.02-12-069. Aglet argues that it has made a substantial contribution to this decision though its opposition to the Utilities' proposals to eliminate the "reasonable manager" standard previously used by the Commission to evaluate utility contract administration. In its comments dated October 18, 2002, Aglet summarized past Commission standards regarding contract administration, discussed utility contract administration risks in relation to DWR contract formation risks, and opposed any transition period during which Utilities might be exempt from reasonableness review. As Aglet points out, no other party expressed similar positions. In fact, in this phase of the proceeding, Aglet was the only party to address the question of reasonableness review. Aglet notes that in D.02-12-069 the Commission found that there was no reason to lower the

existing “reasonable manager” standard for purposes of administering DWR contracts. The decision also rejected the risk-free transition period proposed by the Utilities.

We find that Aglet made a substantial contribution to D.02-12-069. In particular, Aglet was the only party, other than the Utilities, to address the issue of contract administration standards. D.02-09-053 directed the parties to R.01-10-024 to proposed standards for reasonableness of utility administration of DWR contract. The Utilities proposed various standards, each of which contemplated lowering the existing standard of review or eliminating review completely. Aglet was the only party representing ratepayer interests regarding this issue and, consistent with Aglet’s recommendation, D.02-12-069 denied the utilities’ requests for a reduction or elimination of the existing standards for review. Therefore, we find that Aglet has made a substantial contribution to D.02-12-069.

5.4 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Pub. Util. Code § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at 31-33, and Finding of Fact 42.) In that decision, we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Quantification of benefits is often difficult in rulemaking proceedings. Because this rulemaking does not establish specific rates or involve disputes over particular dollar amounts, identification of precise monetary benefits is not possible; however, TURN, CU and Aglet provide several observations which demonstrate that the level of effort by the intervenors in this proceeding was reasonable and productive. In particular, TURN notes that as the energy crisis has demonstrated, procurement costs can be a major driver of utility costs and retail rates and that, appropriate procurement policies and prudent planning practices are essential to maintaining low and stable rates. TURN claims that its contributions to D.02-08-071, D.02-10-062 and the PRG process will promote long-term rate stability, reduce risks to ratepayers, and contribute to resource diversity. CU suggests that the benefits of reduced reliance on the spot market in 2003 and the reliability benefits of contracts for peak period capacity, substantially reduces the risks to ratepayers of blackouts and price spikes. CU claims that a reasonable dollar value of this risk reduction probably rests between \$5 million and \$100 million. We find that TURN and CU's participation was productive in that the costs claimed for participation are less than the benefits realized.

In addition, Aglet notes that maintaining appropriate reasonableness standards will allow ratepayers to recover significant damages in the event of imprudent contract administration. With billions of dollars of procurement costs involved, Aglet believes that the Commission should find that Aglet's participation was productive. We find that Aglet's participation was efficient and the benefits of its participation outweigh the costs.

6. Reasonableness of Requested Compensation**6.1 Amount Requested****6.1.1 TURN**

TURN requests \$195,664.22 as follows:

Attorney Fees

Matthew Freedman	268.25 hours X	\$230	\$ 61,697.50
	27.25 hours X	\$190	\$ 5,177.50
	8.0 hours X	\$115	\$ 920.00
Michel Florio	190.25 hours X	\$385	\$ 73,246.25
	14.0 hours X	\$350	\$ 4,900.00
Robert Finkelstein	0.75 hours X	\$340	\$ 255.00
	5.75 hours X	\$310	\$ 1,782.50
	8.0 hours X	\$170	\$ 1,360.00
Hayley Goodson	69.25 hours X	\$125	\$ 8,656.25
Randy Wu	7.0 hours X	\$385	\$ 2,695.00
Subtotal			\$160,690.00

Witness Fees

Strategy Integration, Inc.

Eric Woychik	163.9 X	\$175	\$ 28,682.50
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JBS Energy, Inc.

William Marcus	21.5 X	\$175	\$ 3,762.50
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Jeff Nahigian	1.5 X	\$115	\$ 172.50
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Subtotal			\$ 32,617.50
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Other Costs

Photocopying Expense			\$ 1,917.60
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Postage Costs			\$ 154.67
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FedEx charges			\$ 19.05
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Attorney and witness expenses			\$ 265.40
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Subtotal			\$ 2,356.72
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Total	\$195,664.22
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6.1.2 Consumers Union

CU requests \$14,812.50 as follows:

Expert witness and advocate work (58 hours @ \$250/hour)	\$14,500.00
Compensation request (5 hours @ \$125/hour)	\$312.50
Total	\$14,812.50

6.1.3 Aglet

Professional time	(8.2 hours@ \$220/hour)	\$ 1,804.00
Compensation request	(4 hours @ \$110/hour)	\$ 440.00
Other costs	(Copies & Postage)	\$ 27.43
Total		\$ 2,271.43

6.2 Hours Claimed**6.2.1 TURN**

TURN has documented its claimed hours through detailed records of the time spent by its attorneys and outside experts in this proceeding. The records indicate both the professional hours and the activities associated with the hours. TURN has separated its time into three primary issue categories as well as several other categories covering preparatory, general work and post-decision work. The three issue categories include: the consideration of procurement plans and ratemaking treatment (62.25 hours), renewable energy policies (69.25 hours), and transitional procurement activities conducted through the Procurement Review Groups (132.75 hours). TURN also identified 149 hours of work that covered a combination of these issue categories where specific allocation was not possible. TURN suggests that for those hours, a reasonable allocation is 50% procurement plan related and 50% renewable energy policy related.

TURN also identified hours that were not allocable by issue but that were fundamental to active participation in the proceeding. For example TURN's initial preparation covered the review of a wider range of issues than

were ultimately addressed by TURN and TURN attendance at certain hearing times could not be allocated by issue. TURN believes that its allocation of hours is consistent with the Commission's direction in D.85-08-012, which states:

“When initially preparing to participate in a case, offset or otherwise, it is often simply impossible to segregate hours by issue, because this is the stage where an intervenor is learning about the case and preliminarily identifying the issues and how they interrelate. Thus we see no reason to require a strict allocation of initial general preparation time. If in our opinion an intervenor makes a substantial contribution on all or most of the issues it addresses, or if we determine that the significance of the issues on which the intervenor prevails justifies full compensation even though there hasn't been strict allocation, the intervenor should received compensation for all of its initial preparation time. If the intervenor is less successful, in our judgement, initial preparation time may be compensated on a pro-rata basis, according to the proportion of successful issues to total issues addressed.”⁶

TURN further divides the unallocable general preparation time into two classes. First, TURN identifies general preparation time that is not allocable by issue but varies in magnitude depending upon the total number of issues in the case. This work included drafting, editing, and processing data requests, review of testimony drafts and preparing a party's own witness during hearings. Second, TURN classifies certain work as work fundamental to active participation in the case that does not vary in relation to the issues covered. This work included review of the testimony and filings of other parties, preparation of

⁶ D.85-02-027 at 15.

protests, attendance at prehearing conferences, initial reviews of the proposed and alternate decisions, and comments on proposed and alternate decisions. TURN requests full compensation for all of the hours in the classification of general preparation, and hearing preparation or hearing attendance, a total of 142.5 hours.

TURN also states that the proceeding included a number of petitions to modify final decisions and applications for rehearing. TURN's request includes 24.25 hours for work it classifies as "post-decision" work spent responding to certain post-decision filings and applications for rehearing. TURN's request does not identify the Commission decisions addressing the petitions to modify or applications for rehearing for which it claims to have made a significant contribution. Since TURN has not identified specific decisions addressing the petitions to modify or application for rehearing, we cannot conclude that the costs associated with TURN's activities meet the requirements for intervenor compensation and we will exclude the associated 24.25 hours from the calculation of TURN's award. We deny without prejudice TURN's request for compensation for work related to the petitions to modify and applications for rehearing as premature.

TURN seeks compensation for the 16 hours devoted to the preparation of the compensation request at one-half the hourly rate.

We have reviewed the detailed billing information submitted by TURN and we find that with the exception of the hours claimed for responding to petitions to modify and applications for rehearing, TURN has reasonably supported the hours claimed.

6.2.2 Consumers Union

CU requests compensation for 58 hours of expert witness and advocacy work and five hours of work preparing the compensation request. Although CU does not separate the hours claimed by issue areas, we have reviewed the detailed record of time spent submitted by CU and conclude that the hourly breakdowns reasonably support the claimed hours for CU.

6.2.3 Aglet

Aglet's request includes time records for Weil. We find that Aglet has adequately and reasonably supported the hours for which it claims compensation related to D.02-12-069.

6.3 Hourly Rates**6.3.1 TURN**

TURN requests an hourly rate of \$190 for work performed by Matthew Freedman in 2001. For 2002, TURN requests an hourly rate of \$230 for Freedman's work. TURN notes that TURN has submitted a compensation request in A.00-11-038 for the requested rate of \$230 for Freedman's work and proposes that the Commission apply here the rate that it adopted for Freedman's work when a compensation decision issued in A.00-11-038. TURN requests an hourly rate of \$310 for Robert Finkelstein in 2001, and requests \$340 for Finkelstein's work in 2002, and, as with Freedman's rate in 2002, TURN proposes that the Commission apply the rate approved in the decision on the compensation request in A.00-11-038. TURN requests an hourly rate of \$350 for work performed by Michel Florio and Randy Wu in 2001, and \$385 for their work in 2002.

We have previously adopted the requested rates for Finkelstein of \$310/hour for 2001 in D.02-03-033 and \$340/hour for 2002 in D.03-01-074, the

requested rates for Florio of \$350/hour for 2001 in D.02-06-070 and \$385/hour for 2002 in D.02-09-040 and the requested rates for Wu of \$350/hour for 2001 in D.02-09-040 and \$385/hour for 2002 in D.03-01-074. It is reasonable to use these hourly rates again here.

D.03-04-011 addressed TURN's second request for intervenor compensation in A.00-11-038. In D.03-04-011 we adopted rates for Freedman of \$190 for 2001 and \$200/hour for 2002. As requested by TURN, we will apply these hourly rates again here.

TURN requests an hourly rate of \$175 for work performed by William Marcus in 2002 and an hourly rate of \$115 for work performed by Jeff Nahigian in 2002. For Marcus, the fiscal year (FY) 2001-2002 rate of \$175/hour was adopted in D.03-04-011. For Nahigian, the FY 2001-2002 rate was adopted in D.02-11-017. We will apply these rates for this proceeding as well.

TURN requests an hourly rate of \$175 for work performed by Eric Woychik in 2002. TURN notes that the Commission has previously approved a rate of \$145 for Woychik's work in 1997 and 1999 and submits that inflation and the increased expertise that Woychik brings to his work establishes the reasonableness of the \$175 rate for his work in 2002. Alternatively, TURN suggests that since the Commission has historically set rates for both Woychik and Marcus at approximately the same level, if the Commission adopts a different rate than the \$175 requested for Marcus's work in A.00-11-038, that rate could be applied to Woychik as well.

Woychik holds a Bachelor of Science degree in Environmental Planning and Policy Analysis from U. C. Davis in 1980, attended the University of the Pacific, McGeorge School of Law from 1981-1982, and graduated with a Masters degree in Economics from New Mexico State University in 1991.

Woychik has 20 years of energy industry experience, including working as a policy analyst and Commissioner Advisor at the Commission beginning in 1983, working as a staff member at the California Energy Commission, serving as a Principle at Synergic Resources Corporation, founding Strategy Integration and California Competition Network, and serving on the board of the California ISO. Woychik's areas of specialization are market design, market protocols and incentive regulation.

The Commission has a practice of increasing hourly compensation in recognition of increased experience and other factors like the market rates for others with similar experience and training. As TURN points out, Woychik's educational training is similar to Marcus', however, Marcus has more experience in the utility industry. Marcus holds a Bachelor of Science degree from Harvard University in 1974 and a Masters in Economics from the University of Toronto in 1975 and has worked in the utility industry since 1978. Woychik's began his energy industry career in 1983. As such, we find that an hourly rate of \$160 reflects a reasonable increase from our previously approved rate from 1999 for Woychik.

TURN requests an hourly rate of \$125 for work performed by Hayley Goodson, a law student who clerked at TURN during the summer between her second and third years of law school. TURN notes that in D.00-02-044, the Commission awarded an hourly rate of \$100 for the 1998 work of a law clerk that appears to have been devoted to compiling data for purposes of preparing a compensation request. TURN submits that an hourly rate of \$125 is reasonable for the substantive work performed by Goodson four years later. Our review of a more recent intervenor compensation decision shows that the

rate adopted for work by a law clerk was \$85 per hour in 2001 (D.03-04-050). We approve an hourly rate for Goodson on \$95 per hour for 2002.

6.3.2 Consumers Union

CU requests an hourly rate of \$250 for Dr. William Ahern. CU states that Dr. Ahern holds a doctorate in Public Policy from Harvard University and has 30 years of experience in regulation as a State manager, expert witness at the Commission, Federal Energy Regulatory Commission, and the California Insurance Department, as a senior analyst with the Rand Corporation and Consumers Union and as a witness before State and Federal legislative committees. As support for its requested rate, CU declares that in 1997 the law firm of Carlsmith Ball Wichman Case & Ichiki paid Ahern \$200 per hour for expert testimony in LA Superior Court on a Qualifying Facility contract dispute and that the Department of Insurance awarded Ahern intervenor compensation at the rate of \$210 per hour for advocacy and expert witness work in the first rate case of the California Earthquake Authority. The Commission has not previously set an hourly rate for Ahern. As stated above, in evaluating the proper rate we look to the experience of particular expert, relevant market rate data, and the rates awarded to peers appearing before the Commission. CU argues that the requested rate is reasonable because it is in the range of awards the Commission has made for senior attorneys at TURN and provides no other market rate data to compare Ahern's rate against other expert witnesses. The market rates for attorneys do not necessarily reflect the appropriate market rate for expert witnesses. We find that Ahern's qualifications and experience are more similar to Aglet's expert, James Weil. Weil holds a Ph.D. in Engineering from the University of California, Berkeley in 1972 and worked at the Commission as an Administrative Law Judge, Commissioner advisor and

engineer for 14 years. As discussed below, in 2001 and 2002, Weil was awarded an hourly rate of \$220. Based on Ahern's role, experience and qualifications and the rates authorized for experts with a comparable level of experience, we set an hourly rate of \$230 for Ahern's work in 2002.

6.3.3. Aglet

Aglet requests Commission approval of (1) an hourly rate of \$220 for professional work performed by James Weil during 2001 and 2002, and (2) one half of that rate for travel time associated with professional work and for preparation of the compensation request. The Commission has previously awarded Aglet compensation for Weil's time at an hourly rate of \$220 for 2001 and 2002 (see D.03-02-017) and we do so again here.

6.4 Other Costs

The costs that TURN and Aglet claim for items such as postage, photocopying, delivery charges, telephone calls, and travel, represent a very small percentage of their requests and are reasonable in light of the large number of participants and the substance of this proceeding. We grant TURN's request of \$2,356.72 and Aglet's request of \$27.43 in expenses. CU did not request compensation for expenses.

6.5 Duplication of Effort

Section 1801.3(f) of the Public Utilities Code states that the intervenor compensation program should be administered to avoid "unnecessary participation that duplicates the participation of similar interests." This does not mean that compensation should be denied simply because a party's participation has overlapped in some way with that of other parties. (See Section 1802.5.) TURN and CU both participated in the successful negotiations leading to the submittal of the Joint Principles. TURN and CU also had similar positions on

certain other issues in this proceeding, but on the whole, TURN focused on issues different from the issues that CU pursued. CU concentrated on advocating up-front, structural, process and planning requirements and minimizing detailed Commission after-the-fact review. Aglet focused on financial issues. The comprehensive time records submitted by TURN, CU, and Aglet indicate that they took reasonable steps to coordinate participation and avoid duplication where possible. There was no unnecessary duplication of effort.

7. Award

7.1 TURN

Consistent with our finding regarding hours, hourly rates, and expenses, we award TURN \$178,410.72 as follows:

	<u>Billing Period</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Total</u>
Freedman	2002	\$200	245.5	\$49,100.00
	2001	\$190	27.25	\$ 5,177.50
	Comp.	\$100	8.0	\$ 800.00
Florio	2002	\$385	190.25	\$ 73,246.25
	2001	\$350	14.0	\$ 4,900.00
Finkelstein	2002	\$340	0.75 hours	\$ 255.00
	2001	\$310	5.75 hours	\$ 1,782.50
	Comp.	\$170	8.0 hours	\$ 1,360.00
Goodson	2002	\$95	69.25 hours	\$ 6,578.75
Wu	2002	\$385	7.0 hours	\$ 2,695.00
			Subtotal	\$145,895.00
<u>Witness Fees</u>				
Woychik	2002	\$160	163.9	\$ 26,224.00
Marcus	2002	\$175	21.5	\$ 3,762.50
Nahigian	2002	\$115	1.5	\$ 172.50
			Subtotal	\$ 30,159.00
<u>Other Costs</u>				

Expenses		\$ 2,356.72
	Total	<u>\$178,410.72</u>

The total compensation awarded to TURN in this proceeding exceeds TURN's initial estimate of \$146,000 in its NOI. We agree with TURN that the higher amount is justified in light of the multiple phases, complexity and scope of the proceeding.

7.2 Consumers Union

We award CU \$13,915.00 as follows:

	<u>Billing Period</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Total</u>
Ahern	2002	\$230	58	\$13,340.00
	Comp.	\$115	5	<u>\$575.00</u>
			Total	\$13,915.00

The total compensation awarded to CU is less than CU's estimate of \$25,000 in its NOI.

7.3 Aglet

We award Aglet \$2,271.43 as follows:

	<u>Billing Period</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Total</u>
Weil	2002	\$220	8.2	\$ 1,804.00
	Comp.	\$110	4	\$ 440.00
Expenses				<u>\$ 27.43</u>
			Total	\$ 2,271.43

The total compensation awards to Aglet in this proceeding, including the \$77,446.40 Aglet received for its contributions to D.02-09-053 and D.02-10-062 exceeds Aglet's initial estimate of \$58,180 in its NOI. We agree with Aglet that the higher amount is justified in light of the multiple phases, complexity and scope of the proceeding.

8. Waiver of Comment Period

This is a compensation matter per Public Utilities Code Section 1801-1812. Accordingly, pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comments is being waived.

9. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Christine Walwyn and Julie Halligan are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.02-08-071, D.02-10-062 and the procurement review process in R.01-10-024.
2. CU has made a timely request for compensation for its contribution to D.02-08-071 and D.02-10-062 and the procurement review process. CU has shown significant financial hardship.
3. Aglet has made a timely request for compensation for its contribution to D.02-12-069.
4. TURN contributed substantially to D.02-08-071, D.02-10-062 and the procurement review process.
5. CU contributed substantially to D.02-08-071, D.02-10-062 and the procurement review process.
6. Aglet contributed substantially to D.02-12-069.
7. TURN has maintained a detailed summary of time spent by its attorneys and expert witnesses to this proceeding.
8. CU has maintained a detailed summary of professional time spent in this proceeding.
9. Aglet has maintained a detailed summary of professional time spent in this proceeding.
10. TURN requests hourly rates for Finkelstein, Florio, Freedman, Wu, Marcus, and Nahigian that have previously been approved by the Commission.
11. \$160 an hour is reasonable rate for Woychik's work in 2002.

12. \$230 an hour is a reasonable rate for Ahern's work in 2002.
13. \$95 an hour is a reasonable rate for Goodson's work in 2002.
14. Aglet has requested an hourly rate for 2002 that has already been approved by the Commission.
15. The miscellaneous expenses incurred by TURN and Aglet in R.01-10-024 are reasonable.

Conclusions of Law

1. TURN, CU and Aglet have fulfilled the requirements of Section 1801-1812, which govern awards of intervenor compensation.
2. For TURN, all attorney hours allocated to "post-decision" work including time spent on applications for rehearing and petitions to modify the decisions should be denied without prejudice as premature.
3. TURN should be awarded \$178,410.72 for its contributions to D.02-08-071, D.02-10-062 and the procurement review group process.
4. CU should be awarded \$13,915.00 for its contributions to D.02-08-071, D.02-10-062 and the procurement review process.
5. Aglet should be awarded \$2,271.43 for its contribution to D.02-12-069.
6. Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network is awarded \$178,410.72 in compensation for its substantial contribution to Decision (D.) 02-08-071, D.02-10-062 and the Procurement Review Group process.

2. Consumers Union is awarded \$13,915.00 in compensation for its substantial contribution to D.02-08-071, D.02-10-062 and the Procurement Review Group process.

3. Aglet is awarded \$2,271.43 in compensation for its substantial contribution to D.02-12-069.

4. The award should be paid pursuant to Pub. Util. Code § 1807 by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E) and San Diego Gas and Electric Company (SDG&E) based on the utilities' respective 2002 jurisdictional electric revenues. Payment shall be made within 30 days of the effective date of this order. SCE, PG&E and SDG&E shall also pay interest in the award at the rate earned on prime three month commercial paper, as reported in the Federal Reserve Statistical Release H.15 beginning with the 75th day after the requests were filed.

5. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D0208071, D0210062, and D0212069
Proceeding(s):	R0110024
Author:	Administrative Law Judge Halligan
Payer(s):	PG&E, SCE, SDG&E

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network	12/23/02	\$195,664.22	\$178,410.72	Failure to justify hourly rate, premature
Consumers Union	12/16/02	\$14,812.50	\$13,915.00	Failure to justify hourly rate
Aglet Consumer Alliance	2/16/03	\$2,271.43	\$2,271.43	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Matthew	Freedman	Attorney	The Utility Reform Network	\$190	2001	\$190
Matthew	Freedman	Attorney	The Utility Reform Network	\$230	2002	\$200
Robert	Finkelstein	Attorney	The Utility Reform Network	\$310	2001	\$310
Robert	Finkelstein	Attorney	The Utility Reform Network	\$340	2002	\$340
Michel	Florio	Attorney	The Utility Reform Network	\$350	2001	\$350
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385
Randy	Wu	Attorney	The Utility Reform Network	\$350	2001	\$350
Randy	Wu	Attorney	The Utility Reform Network	\$385	2002	\$385
Jeff	Nahigian	Economist	The Utility Reform Network	\$115	2002	\$115
William	Marcus	Economist	The Utility Reform Network	\$175	2002	\$175

Hayley	Goodson	Law Clerk	The Utility Reform Network	\$125	2002	\$95
Eric	Woychik	Policy Expert	The Utility Reform Network	\$175	2002	\$160
William	Ahern	Policy Expert	Consumers Union	\$250	2002	\$230
James	Weil	Policy Expert	Aglet Consumer Alliance	\$220	2002	\$220